When there is doubt as to the weight of the evidence or the credibility of the witnesses, the court may express an opinion and may even go into detail, but the final decision in this respect rests with the jury. *Mt. Adams, etc., Ry. Co.* v. *Lowery*, 74 Fed. Rep. 463. In this manner, while trial by jury is preserved intact, yet the jury may be restrained within the bounds of reason. See 21 AM. L. REV. 859.

LIABILITY OF OCCUPIERS OF LAND FOR NEGLIGENCE. — It seems to be a commonly accepted opinion that a landowner is exempt, so far as acts upon his own land are concerned, from the general tort liability for damage resulting from want of care. His non-responsibility to trespassers is regarded as illustrative of his general status. On the other hand, his responsibilities to business visitors, licensees, etc., are regarded, not as applications of the fundamental principle that every man must use due care in his acts, but rather as obligations imposed upon the landowner only in exceptional cases. In their efforts to prove certain cases either within or without one of these exceptions, the courts have sometimes drawn confusing distinctions. A social guest, for example, is not entitled to the protection that is accorded to one coming on business, though the former's invitation is often the more apparent of the two, and though the business visitor may be regarded as willing to assume the greater risk. *Southcote* v. *Stanley*, 1 H. & N. 247. On the other hand, the injustice which would result in many cases from denying recovery to a trespasser has led some courts to hold that even to him the occupier of land owes a rather vaguely defined duty of care. *Cincinnati, etc., R. R. Co.* v. *Smith*, 22 Oh. St. 227. The turn-table cases are familiar instances of the conflict of opinion in this branch of the law. See *Frost* v. *Eastern R. R.*, 64 N. H. 220; *Keffe* v. *Milwaukee, etc., R. R. Co.*, 21 Minn. 207.

The length to which a court may go to fit a case to a rule was illustrated in a recent Maine decision. The plaintiff, who was waiting to enter the defendant's exhibition grounds, was injured by a bullet, owing to the defendant's negligence in the construction of a shooting gallery on the grounds. The court with great difficulty concluded that the plaintiff might be classed as a business visitor on the land, though he was not at the time on the defendant's land, but on a near-by railroad platform. *Thornton* v. *Maine State Agricultural Society*, 53 Atl. Rep. 979. The case seems to involve a confusing extension of the class of business visitors; but the result is undoubtedly correct. It is believed that the general confusion in the subject may be avoided by reversing the usual point of view, namely, that the landowner is not liable save in exceptional classes of cases, and regarding him as subject to the ordinary responsibilities for all negligent acts, with such exceptions as public policy, or the circumstances of the case may require. Thus as a matter of policy it may be necessary to the proper enjoyment of land that the owner be not compelled to keep his land in a safe condition for trespassers. Moreover, since trespassers are not ordinarily to be expected, due care under the circumstances may mean little or no care. On the other hand, since the same considerations of policy do not operate to an equal extent as against licensees and business visitors, and since their presence is more or less to be expected, the care required owing to the circumstances is greater, and accordingly the courts impose a greater responsibility. The rules of law applicable to these cases may be regarded as nothing more than

judicial generalizations as to what as a matter of fact is due care in each class of cases. According to this view, there would be no difficulty in holding a negligent defendant, as in the principal case, even though he could not be brought clearly within one of the established classes. The only peculiarity would be that the jury would have to determine the standard of due care, instead of having it settled for them as a matter of law. A few courts seem to assume the point of view contended for, though without a clear expression of it. Some cases, for instance, appear to make an owner's liability to business visitors depend on whether he had notice of their whereabouts at the time. *Broslin* v. *Kansas, etc., R. R. Co.*, 114 Ala. 398. Similarly the owner may be liable to a trespasser where trespassers are common and to be expected. *South & North Ala. Ry. Co.* v. *Donovan*, 84 Ala. 141. The circumstances relied upon would seem immaterial, except as they help to determine the standard of care.

AVOIDING STATUTE OF LIMITATIONS BY ACKNOWLEDGMENT OF DEBT. — The apparent injustice of extinguishing a valid debt by a strict application of the statute of limitations led the courts at a comparatively early date to modify the effect of the statute by holding that any new promise to pay a debt thus barred revived the liability. The existing moral obligation was held a sufficient consideration to support the new promise. See *Philips* v. *Philips*, 3 Hare 281, 299. Subsequently, the mere acknowledgment of the existence of the debt was regarded as raising an implied promise to pay it. See *Sigourney* v. *Drury*, 31 Mass. 387. At first the theory by which the acknowledgment was regarded as reviving the debtor's liability was apparently that the statute merely raised a presumption of payment which might be rebutted. *Newlin* v. *Duncan*, 1 Harr. (Del.) 204. This, however, was too palpable a fiction. The logical result of it would be that the statutory bar might always be removed by proof that the debt had not, in fact, been paid. This would have rendered the statute entirely nugatory; consequently the whole theory has been generally discarded. A second theory suggested is that the acknowledgment is in effect merely a waiver of the statutory defense. To this explanation, however, there are several objections. In the first place, it is generally, though not universally, held that the new promise must be made before action brought, and not during the suit. *Bradford* v. *Spyker's Adm'r*, 32 Ala. 134. Again, if the new promise be conditional in form, it need be fulfilled only according to its terms. *Tanner* v. *Smart*, 6 B. & C. 603. Furthermore, the statute immediately begins to run on the new promise as though it were an independent cause of action. *Munson* v. *Rice*, 18 Vt. 53. In the face of these objections it would seem that the theory of waiver is untenable. The new promise is now considered as one of the essential elements on which the suit is founded. *Krebs* v. *Olmstead*, 137 Mass. 504.

Just what has been required by the courts in order to avoid the effect of the statute has varied from time to time. At one period the courts, influenced by the theory that the statute merely raised a presumption of payment, allowed almost any admission of the debt to take the case out of the statute. *Peters* v. *Brown*, 4 Esp. 46; *Bryan* v. *Horseman*, 4 East 599. The modern cases, recognizing that the action is in reality grounded upon the new promise, have required something nearer a promise in fact. To-day an acknowledgment of indebtedness must be clear and distinct. *Bell* v.